

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

In the Matter of the Petition of Autotel pursuant to)
Section 252(e)(5) of the Communications Act for)
Preemption of the Jurisdiction of the Public Utilities) WC Docket
No. 07-240
Commission of Nevada Regarding Enforcement of)
Interconnection Agreement with Embarq (formerly)
Central Telephone of Nevada d/b/a Sprint of Nevada.)

COMMENTS OF THE PUBLIC UTILITIES COMMISSION OF NEVADA

On February 19, 2008 Autotel filed its “Application for Review” of the Federal Communications Commission (“FCC”) Memorandum Opinion and Order (“the Order”) issued by the Wireline Competition Bureau in January (DA 07-5114). The Order denied Autotel’s petition for FCC preemption of the jurisdiction of the Public Utilities Commission of Nevada (“PUCN”). PUCN respectfully submits these comments in opposition to Autotel’s request for review/reconsideration.

REQUEST FOR REVIEW

Autotel’s request does not present any additional evidence or arguments in support of preemption, and it fails to identify any error in the Order or any violation of authority. Autotel’s latest filing is simply a repetition of its arguments concerning PUCN’s dismissal without prejudice of Autotel’s defective complaint regarding Autotel’s Interconnection Agreement with Sprint/Embarq. Autotel’s arguments were properly analyzed and rejected in the Order. PUCN’s arguments were sustained in the Order. Without repeating them here, PUCN incorporates its previous Comments

opposing the preemption petition. In short, the burden of proof is on the party seeking preemption to show that the state commission has failed to act, and Autotel failed to meet that burden. The Order reviewed the facts and arguments, and correctly found that PUCN's dismissal of Autotel's defective complaint satisfied PUCN's obligation to make a final determination.

Dismissal on jurisdictional or procedural grounds does not constitute failure to act pursuant to section 252 of the Telecommunications Act of 1996.

SANCTIONS

In its previous Comments, PUCN recommended both the dismissal of the preemption petition and the imposition of sanctions against Autotel. Autotel had been specifically warned against filing frivolous pleadings in violation of 47 C.F.R. Section 152. In the order issued on January 12, 2007, denying Autotel's petition for preemption of the Arizona Corporation Commission's jurisdiction over the same issues, FCC specifically reminded Autotel that the FCC rules prohibit such pleadings that have no good ground of support and are based on arguments that have been specifically rejected by the FCC. (DA 07-69, WC Docket No. 06-194, paragraph 14, citing 11 FCC Rcd 3030, Release #FCC 96-42.)

A year later, the January 16, 2008 Order in this Docket reviewed Autotel's eight previous preemption petitions, all closely parallel in facts and legal arguments, and all rejected on the same grounds. The Order again cautioned Autotel against filing frivolous pleadings, including those filed

without proper supporting facts, based on previously rejected arguments or having no plausible basis for relief. The Order reserved the option to refer violations of the rule for enforcement and possible sanctions, specifically including violations in this Docket.

In submitting its request for review, Autotel has now filed yet another unsupported pleading based on rejected arguments with no plausible basis for relief.

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CONCLUSION:

Autotel has invited the FCC to take further and appropriate action. PUCN respectfully recommends denial of the request for review as well as exercise of the reserved option for enforcement and sanctions against Autotel.

Dated this ____ day of February, 2008.

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